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Attorney for Defendant Davis Law Firm

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

LAWRENCE JAMES SACCATO,

Plaintiff,

v.

DAVIS LAW FIRM; DKC INVESTMENTS
LLC a/s/o; FIRST NATIONAL BANK OF
OMAHA,

Defendants.

Case No. CV10-6192 TC

**ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIM OF DEFENDANT
DAVIS LAW FIRM**

Defendant Davis Law Firm answers plaintiff's third amended complaint ("the complaint") as follows:

**STATEMENT OF CLAIM AGAINST DAVIS LAW FIRM,
DKC INVESTMENT LLC AND FIRST NATIONAL BANK OF OMAHA**

Admits that this court generally has subject matter jurisdiction over claims under the Fair Debt Collection Practices Act ("FDCPA"). Davis Law Firm lacks sufficient information to form a belief as to the truth of the remaining allegations in the introductory paragraph of the complaint and, therefore, denies those allegations.

1.

Admits that the complaint purports to be based on the FDCPA, 15 U.S.C. § 1692 *et seq.*, and the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.*, but denies any liability under either statute, and denies the applicability of the FCRA.

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DEFENDANT DAVIS LAW FIRM**

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Additionally, Davis Law Firm admits that when it engages in certain debt collection activities, those activities may be governed by the applicable provisions of the FDCPA; and that its business address is alleged in paragraph 1. Davis Law Firm denies the remaining allegations in paragraph 1.

2.

Admits that it does business with defendant DKC Investments LLC ("DKC"), which is a debt buyer. Davis Law Firm denies the remaining allegations in paragraph 2, based in part on the lack of sufficient information to form a belief as to the truth of those allegations.

3.

Davis Law Firm lacks sufficient information to form a belief as to the truth of the allegations in paragraph 3 and, therefore denies those allegations.

4.

Admits that this court has subject matter jurisdiction over claims under the FDCPA and the FCRA, but denies the remaining allegations in paragraph 4.

5.

To the extent the allegations in paragraph 5 relate to it, Davis Law Firm denies those allegations. To the extent the allegations in paragraph 5 relate to other defendants, Davis Law Firm lacks sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

6.

Davis Law Firm lacks sufficient information to form a belief as to the truth of the allegations in paragraph 6 and, therefore, denies those allegations.

7.

To the extent the allegations in paragraph 7 relate to it, Davis Law Firm denies those allegations. To the extent the allegations in paragraph 7 relate to other

defendants, Davis Law Firm lacks sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

COUNT I

VIOLATIONS OF FDCRA [*sic*] BY DAVIS LAW FIRM ON BEHALF OF DKC INVESTMENTS LLC

8.

Admits that it attempted to collect the debt at issue from plaintiff, and that the debt is currently owned by DKC. To the extent the remaining allegations in paragraph 8 are directed at it, Davis Law Firm denies those allegations. To the extent the remaining allegations are directed at another defendant, Davis Law Firm lacks sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

9.

The allegations in paragraph 9 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm denies them.

10.

Admits that it received from plaintiff a letter dated February 22, 2010, the content of which speaks for itself. Davis Law Firm denies the remaining allegations in paragraph 10.

11.

Admits that it sent a letter to plaintiff responding to his February 22, 2010 letter, and that the content and enclosures of the response letter speak for themselves. Davis Law Firm denies the remaining allegations in paragraph 11.

12.

Admits that it received from plaintiff a document titled "Notice of Pending Lawsuit," and that the content of the notice speaks for itself. Davis Law Firm denies the remaining allegations in paragraph 12.

13.

Admits that it received by mail a document titled "Notice of Pending Lawsuit," but denies the remaining allegations in paragraph 13.

COUNT II

VIOLATIONS OF FDCRA [*sic*] BY DAVIS LAW FIRM ON BEHALF OF DKC INVESTMENTS LLC

14.

Denies the allegations in paragraph 14.

COUNT III

VIOLATIONS OF THE FAIR CREDIT REPORTING ACT BY CO-DEFENDANT FIRST NATIONAL BANK OF OMAHA

15.

Davis Law Firm lacks sufficient information to form a belief as to the truth of the allegations in paragraph 15 and, therefore, denies those allegations.

16.

The allegations in paragraph 16 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm denies the allegations in this paragraph.

17.

The allegations in paragraph 17 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are

directed at it, Davis Law Firm admits that the provisions of the FCRA speak for themselves, but denies the remaining allegations in this paragraph.

18.

The allegations in paragraph 18 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm admits that the provisions of the FCRA speak for themselves, but denies the remaining allegations in this paragraph.

19.

The allegations in paragraph 19 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm admits that the provisions of the FCRA speak for themselves, but denies the remaining allegations in this paragraph.

20.

The allegations in paragraph 20 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm denies the allegations in this paragraph.

COUNT IV

VIOLATION OF THE FCRA BY CO-DEFENDANT FIRST NATIONAL BANK OF OMAHA

21.

The allegations in paragraph 21 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm denies the allegations in this paragraph.

COUNT V

**VIOLATION OF THE FCRA BY CO-DEFENDANT
FIRST NATIONAL BANK OF OMAHA**

22.

The allegations in paragraph 22 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm admits that the provisions of the FCRA speak for themselves, but denies the remaining allegations in this paragraph.

23.

The allegations in paragraph 23 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm admits that the provisions of the FCRA speak for themselves, but denies the remaining allegations in this paragraph.

COUNT V(2)¹

**VIOLATION OF THE FCRA BY CO-DEFENDANT
FIRST NATIONAL BANK OF OMAHA**

24.

The allegations in paragraph 24 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm admits that the provisions of the FCRA speak for themselves, but denies the remaining allegations in this paragraph.

¹ The complaint has two "Count Vs." This section addresses the allegations in paragraphs 24 and 25, found in the second "Count V" of the complaint.

25.

The allegations in paragraph 25 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm denies the allegations in this paragraph.

COUNT VI

VIOLATION OF THE FCRA BY CO-DEFENDANT FIRST NATIONAL BANK OF OMAHA

26.

The allegations in paragraph 26 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm admits that the provisions of the FCRA speak for themselves, but denies the remaining allegations in this paragraph.

27.

The allegations in paragraph 27 are directed at another defendant and, therefore, do not require a response from Davis Law Firm. To the extent the allegations are directed at it, Davis Law Firm denies them.

COUNT VII

VIOLATIONS OF THE FDCRA [*sic*] BY DAVIS LAW FIRM ON BEHALF OF DKC INVESTMENTS LLC

28.

Admits that it sent a letter to plaintiff containing the statutorily required validation notice. Davis Law Firm denies the remaining allegations in paragraph 28.

29.

Denies the allegations in paragraph 29.

30.

As to paragraph 30, Davis Law Firm admits and denies as alleged above.

SUMMATION

Denies the allegations in the “summation” section of the complaint, based in part on the lack of sufficient information to form a belief as to the truth of those allegations.

31.

Except as specifically admitted, Davis Law Firm denies each and every allegation of the complaint.

AFFIRMATIVE DEFENSES

32.

Plaintiff fails to state a claim against Davis Law Firm upon which relief can be granted.

33.

Service of the summons and complaint on Davis Law Firm was insufficient.

34.

Davis Law Firm did not furnish any information to any credit reporting agencies. Therefore, the FCRA does not apply to it.

35.

Plaintiff’s claims are barred in whole or in part by the doctrines of claim preclusion and/or issue preclusion.

36.

Davis Law Firm properly verified the debt after receiving a written dispute from plaintiff, and before taking further collection action. Therefore, there can be no violation of 15 U.S.C. §1692g.

37.

To the extent plaintiff establishes a violation of the FDCPA, any such violation resulted from a bona fide, unintentional error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Therefore, Davis Law Firm should not be held liable for any such violation.

38.

Plaintiff's damages, if any, were the result of his own fault or the fault of others for whom Davis Law Firm is not responsible or liable.

39.

Plaintiff's damages, if any, were aggravated by his own failure to use reasonable diligence to mitigate them.

40.

Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

COUNTERCLAIM

41.

Davis Law Firm is entitled to recover its attorney's fees under 15 U.S.C. §1692k(a)(3), and/or 15 U.S.C. §§1681n(c) and 1681o(b).

RESERVATION OF RIGHT TO AMEND

42.

Davis Law Firm reserves its right to amend and to add further defenses or claims, as relevant information becomes available.

WHEREFORE, Davis Law Firm prays for judgment in its favor on plaintiff's claims and on its counterclaim; for dismissal of plaintiff's claims with prejudice; for its

attorney fees, costs, and disbursements; and for any other relief that the court decides is proper.

DATED: October 4, 2010

COSGRAVE VERGEER KESTER LLP

/s/ Robert E. Sabido

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Attorney for Defendant Davis Law Firm

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing **ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM OF DEFENDANT DAVIS LAW FIRM** on the date indicated below by:

- ☒ mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- ☐ hand delivery,
- ☐ facsimile transmission,
- ☐ overnight delivery,
- ☒ electronic filing notification;

I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorney(s) at the address(es) listed below:

Lawrence James Saccato
c/o 6387 Old 99 S.
Roseburg, OR 97471
Plaintiff *pro se*

Jeffrey Hasson
Davenport & Hasson, LLP
12707 NE Halsey Street
Portland, OR 97230
Attorney for Defendant DKC Investments LLC

DATED: October 4, 2010

/s/ Robert E. Sabido
Robert E. Sabido